

NTSB Order No. EA-4838

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 3rd day of May, 2000

Respondent .

OPINION AND ORDER

¹A portion of the transcript containing the initial decision is attached.

when the aircraft was not in an airworthy condition, the required maintenance record entries had not been made, and a special flight permit had not been issued for the flight, in violation of sections 91.7(a) and (b), 91.13(a), 91.203(a), and 91.407(a)(1) and (2) of the Federal Aviation Regulations (FARs), 14 C.F.R. Part 91.² The law judge nevertheless reduced the sanction from a 120 to a 100-day suspension of respondent's commercial pilot certificate.³

Respondent raises two issues, both for the first time, on appeal. First, he claims that charges were filed 182 days after the questioned flight and therefore should have been dismissed as stale pursuant to section 821.33 of the Board's rules, 49 C.F.R. § 821.33. He further argues that sanction should be waived because the violations were inadvertent and he filed a report with NASA under the Aviation Safety Reporting Program (ASRP). As discussed below, we find his arguments unpersuasive.

The Administrator notes that respondent failed at the hearing to file a motion to dismiss for staleness and, as the

²Sections 91.7(a) and (b) prohibit any person from operating an aircraft unless it is in an airworthy condition and state that it is the pilot-in-command's responsibility to determine whether an aircraft is in condition for safe flight; section 91.13(a) states that "no person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another"; section 91.203(a) states that no person may operate a civil aircraft without current airworthiness and registration certificates; and section 91.407(a)(1) and (2) prohibit any person from operating an aircraft that has undergone maintenance unless it was properly approved for return to service and the required maintenance entry had been made.

³The Administrator did not appeal the sanction reduction.

Board has said, cannot now be heard to raise the issue for the first time. See Administrator v. Pearsall, NTSB Order No. EA-3576 at 2, n.3 (1992). We agree. By failing to raise the issue earlier, respondent has effectively waived his objection on staleness grounds.⁴

Similarly, respondent claims for the first time on appeal that he filed a report with NASA under the ASRP. He never mentioned this filing during the hearing, nor produced, now or then, any evidence to support his assertion. In sum, he has presented no basis to justify disturbing the law judge's initial decision.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The 100-day suspension of respondent's commercial pilot certificate shall begin 30 days after the service date indicated on this opinion and order.⁵

HALL, Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

⁴Even were we to entertain his stale complaint argument, it appears that it would fail. As the Administrator points out, the stale complaint rule refers to the time period of "6 months," not 180 days, as respondent suggests. 49 C.F.R. § 821.33. While respondent asserts that the charge was filed 182 days after the offense occurred, the Administrator notes that the 182 days in question fell within a six-month period.

⁵For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR section 61.19(f).